

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERIC MAYVILLE and JULIE MAYVILLE,

Plaintiffs,

COMPLAINT

-against-

JURY TRIAL DEMANDED

FUTURE MOTION, INC.,

Defendant.

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Plaintiffs ERIC MAYVILLE and JULIE MAYVILLE, by their attorneys
HALPERIN & HALPERIN, P.C., complaining of the defendants herein, allege as follows:

THE PARTIES

1. At all times hereinafter mentioned, plaintiffs ERIC MAYVILLE and JULIE MAYVILLE were and still are citizens of the State of New York, residing in the Town of Cortlandt, County of Westchester and State of New York (hereinafter “The Premises”).

2. Upon information and belief, at all times hereinafter mentioned, defendant FUTURE MOTION, INC. was and still is a foreign corporation duly authorized to do business in the State of New York, having its principal office for the transaction of business in the City of Santa Cruz, County of Santa Cruz and State of California.

3. Upon information and belief, at all times hereinafter mentioned, defendant FUTURE MOTION, INC. transacted and conducted business in the State of New York.

4. Upon information and belief, at all times hereinafter mentioned, defendant FUTURE MOTION, INC. derived substantial revenue from goods and products used

in the State of New York.

5. Upon information and belief, at all times hereinafter mentioned, defendant FUTURE MOTION, INC. expected or should have expected its acts to have consequences within the State of New York and derived substantial revenue from interstate commerce within the United States, and within the State of New York in particular.

6. Upon information and belief, at all times hereinafter mentioned, Defendant FUTURE MOTION, INC. was in the business of designing, selling, manufacturing and/or distributing products for the purpose of sale and use to the general public.

JURISDICTION & VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1332(a)(1), as a consequence of the fact that the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of the State of New York and citizens or subjects of a foreign State.

8. This Court has personal jurisdiction over the defendants herein because defendants transact business within the State of New York and this district; have availed themselves of the privilege of conducting activities within the State of New York and this district; and have engaged in the activities giving rise to this lawsuit within the State of New York and this district.

9. Venue is appropriate in this Court pursuant to 28 U.S.C. Section 1391(a)(b) because defendants maintain offices within this district and/or are transacting business in this district; and a substantial part of the events or omissions giving rise to the claim occurred in this district.

**AS AND FOR A FIRST, SEPARATE & DISTINCT
CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ERIC MAYVILLE
(NEGLIGENCE)**

10. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs "1" through "9" with the same force and effect as though fully set forth at length herein.

11. Upon information and belief, at all times hereinafter mentioned, defendant FUTURE MOTION, INC. designed and manufactured, offered for sale, sold and delivered to plaintiff ERIC MAYVILLE directly, a self-balancing electric board/recreational personal transporter, often described as an electric skateboard known as a "Onewheel+," (hereinafter "Onewheel+").

12. On or about December 9, 2017 at approximately 10:00 P.M., while plaintiff ERIC MAYVILLE was riding the Onewheel+ on the driveway upon his residence known by the street address 62 Rocky Ridge in the Town of Cortlandt, County of Westchester and State of New York, in accordance with the packaged instructions, the Onewheel+, without notice, suddenly and unexpectedly shut off while in motion causing said plaintiff to be ejected from the Onewheel+, and which fall caused said plaintiff to sustain the serious injuries hereinafter set forth.

13. Defendant FUTURE MOTION, INC., its agents, servants and/or employees were reckless, careless and negligent in, among other things, that they failed and omitted to design, manufacture and sell a product that was reasonably safe; failed and omitted to adequately test the Onewheel+; failed and omitted to adequately warn plaintiff ERIC

MAYVILLE of the risks and dangers associated with the use of the Onewheel+; failed and omitted to test and explore reasonable and more safe alternative devices; failed and omitted to employ adequately skilled personnel to design, manufacture, make, offer and/or deliver a product having a properly designed and constructed means of supporting a rider such that those persons properly using the Onewheel+ would not be ejected by a sudden shutoff; and the defendant FUTURE MOTION, INC, its agents, servants and/or employees, knew or should have known that a consumer would and could be injured if such device were not properly designed and constructed; failed and omitted to properly, reasonably and adequately design, make and manufacture the Onewheel+ in that it would shut off suddenly and without a warning while in motion when the battery was low; failed and omitted to properly, reasonably and adequately design, make and manufacture the Onewheel+ in that it would fail to balance while in motion without a warning; failed and omitted to properly, reasonably and adequately design, make and manufacture the Onewheel+ in that it would suddenly and without warning tip forward while in motion and eject riders such as plaintiff ERIC MAYVILLE herein; failed and omitted to properly, reasonably and adequately design, make and manufacture the Onewheel+ so that it would display the battery charge level without the use of a separate device such as a smartphone; and the defendant FUTURE MOTION, INC, its agents, servants and/or employees, knew or should have known that a consumer would and could be injured because of the failure to warn of low battery or in other ways display the battery charge level; failed and omitted to warn plaintiff ERIC MAYVILLE of foreseeable dangers of using the Onewheel+; failed and omitted to warn plaintiff ERIC MAYVILLE and others by suitable supervision, warnings, instructions, brochures, pamphlets concerning the proper use of the Onewheel+, and the fact

that no function was installed on the device to warn or display of a low battery; failed and omitted to properly test and inspect the Onewheel+; failed and omitted to apprehend and comprehend a potentially imminent dangerous, hazardous and perilous accident situation, and failed to take the necessary steps to remedy the same; and in otherwise being careless and negligent.

14. Upon information and belief, the Onewheel+ was defective when it left the control of defendant FUTURE MOTION, INC; and plaintiff ERIC MAYVILLE could not, by the exercise of reasonable care, have detected or discovered the defect.

15. Plaintiff ERIC MAYVILLE was seriously injured when using the Onewheel+ in the manner normally intended for its use solely as a consequence of the negligence of defendant FUTURE MOTION, INC. in designing, manufacturing and selling a defective product.

16. The accident and the personal injuries to plaintiff ERIC MAYVILLE resulting therefrom were caused through and by reason of the negligence of defendant FUTURE MOTION, INC., by and through its agents, servants and/or employees, with no negligence on the part of the plaintiffs herein contributing thereto.

17. As a foreseeable, direct and proximate result of the wrongful acts and omissions of defendant FUTURE MOTION, INC., plaintiff ERIC MAYVILLE was caused to sustain serious, severe and painful personal injuries, was rendered sick, sore, lame, disabled, and otherwise infirm, suffering internal injuries, physical pain, and mental anguish; was compelled to seek medical care and attention, incurring expenses in connection therewith, in an attempt to rectify and remedy his sick, sore, lame, and disabled condition; was caused to

undergo numerous surgical procedures; was caused to be incapacitated from his employment and usual activities; was caused to experience severe physical and psychological pain, suffering, required surgery and treatment, incurred expenses, lost earnings, shortened life expectancy, and in other respects, was damaged.

18. By reason of the foregoing, plaintiff ERIC MAYVILLE has been damaged in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars.

**AS AND FOR A SECOND, SEPARATE & DISTINCT
CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ERIC MAYVILLE
(FAILURE TO WARN)**

19. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs "1" through "18" with the same force and effect as though fully set forth at length herein.

20. Defendant FUTURE MOTION, INC. developed, tested, assembled, manufactured, packaged, labeled, prepared, distributed, marketed, supplied, and/or sold the Onewheel+ in the course of its business and continued to do so.

21. Defendant FUTURE MOTION, INC. did in fact develop, test, assemble, manufacture, package, label, prepare, distribute, market, retail, supply, and/or sell the Onewheel+, including the distribution of promotional materials, publicity, and/or information to plaintiff ERIC MAYVILLE, including but not limited to, the information printed on the instructions for use, labeling, and/or packaging.

22. Defendant FUTURE MOTION, INC. expected the Onewheel+ to reach

consumers in the State of New York, including plaintiff ERIC MAYVILLE without substantial change in the condition.

23. Defendant FUTURE MOTION, INC. failed to adequately warn the public, including plaintiff ERIC MAYVILLE, of the risk of suffering the type and manner of injuries suffered by plaintiff ERIC MAYVILLE, which risks and/or dangers were known or should have been known to defendant.

24. The Onewheel+, and the sales and promotional materials, developed, tested, assembled, manufactured, packaged, labeled, prepared, distributed, marketed, retailed, supplied, and/or sold by defendant FUTURE MOTION, INC. were defective, including one or more of the following particulars:

a. The Onewheel+ was not properly designed and constructed to support a rider such that those persons properly using the Onewheel+ would not be ejected by a sudden shutoff;

b. The Onewheel+ was not properly designed and constructed so that it would shut off suddenly and without a warning while in motion when the battery was low;

c. The Onewheel+ was not properly designed and constructed so that it would fail to balance while in motion without a warning;

d. The Onewheel+ was not properly designed and constructed so that it would suddenly and without warning tip forward and eject riders while in motion such as plaintiff ERIC MAYVILLE herein;

e. The Onewheel+ was not properly designed and constructed to display the battery charge level without the use of a separate device such as a smartphone;

25. The Onewheel+, manufactured by defendant FUTURE MOTION, INC., was sold to plaintiff ERIC MAYVILLE and was unreasonably dangerous when sold due to the possibility of stopping suddenly and without warning while in motion.

26. As a direct and proximate result of defendant's failure to adequately warn of this risk, plaintiff ERIC MAYVILLE has suffered damages including injury, and physical and mental pain and suffering.

27. Plaintiff ERIC MAYVILLE has also incurred expenses and economic losses.

28. Defendant FUTURE MOTION, INC. failed to adequately warn plaintiff ERIC MAYVILLE. Defendants and each of them knew the Onewheel+ designed, marketed, manufactured, sold, and distributed by said defendant was defective and not reasonably safe, thereby showing complete indifference to or conscious disregard for plaintiff ERIC MAYVILLE's safety and the safety of the general public.

29. As a foreseeable, direct and proximate result of the wrongful acts and omissions of defendant FUTURE MOTION, INC., plaintiff ERIC MAYVILLE was caused to sustain serious, severe and painful personal injuries, was rendered sick, sore, lame, disabled, and otherwise infirm, suffering internal injuries, physical pain, and mental anguish; was compelled to seek medical care and attention, incurring expenses in connection therewith, in an attempt to rectify and remedy his sick, sore, lame, and disabled condition; was caused to

undergo numerous surgical procedures; was caused to be incapacitated from his employment and usual activities; was caused to experience severe physical and psychological pain, suffering, required surgery and treatment, incurred expenses, lost earnings, shortened life expectancy, and in other respects, was damaged.

30. By reason of the foregoing, plaintiff ERIC MAYVILLE has been damaged in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars.

**AS AND FOR A THIRD, SEPARATE & DISTINCT
CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ERIC MAYVILLE
(BREACH OF WARRANTY)**

31. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs "1" through "30" with the same force and effect as though fully set forth at length herein.

32. Defendant FUTURE MOTION, INC. breached its implied warranty of merchantability and fitness for a particular purpose in that Onewheel+ was not of merchantable quality, nor was it fit for the use for which it was intended.

33. As a foreseeable, direct and proximate result of the wrongful acts and omissions of defendant FUTURE MOTION, INC., plaintiff ERIC MAYVILLE was caused to sustain serious, severe and painful personal injuries, was rendered sick, sore, lame, disabled, and otherwise infirm, suffering internal injuries, physical pain, and mental anguish; was compelled to seek medical care and attention, incurring expenses in connection therewith, in an attempt to rectify and remedy his sick, sore, lame, and disabled condition; was caused to

undergo numerous surgical procedures; was caused to be incapacitated from his employment and usual activities; was caused to experience severe physical and psychological pain, suffering, required surgery and treatment, incurred expenses, lost earnings, shortened life expectancy, and in other respects, was damaged.

34. By reason of the foregoing, plaintiff ERIC MAYVILLE has been damaged in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars.

**AS AND FOR A FOURTH, SEPARATE & DISTINCT
CAUSE OF ACTION
ON BEHALF OF PLAINTIFF ERIC MAYVILLE
(STRICT LIABILITY)**

35. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs "1" through "34" with the same force and effect as though fully set forth at length herein.

36. The Onewheel+ designed, marketed, manufactured, and distributed by defendant FUTURE MOTION, INC. was defective and not reasonably safe.

37. Plaintiff ERIC MAYVILLE was using the Onewheel+ in a reasonable and proper manner and in accordance with the packaged instructions; and as a consequence, defendant FUTURE MOTION, INC. is strictly liable in connection with the design and manufacture of the Onewheel+, as aforesaid.

38. As a foreseeable, direct and proximate result of the wrongful acts and omissions of defendant FUTURE MOTION, INC., plaintiff ERIC MAYVILLE was caused to sustain serious, severe and painful personal injuries, was rendered sick, sore, lame, disabled,

and otherwise infirm, suffering internal injuries, physical pain, and mental anguish; was compelled to seek medical care and attention, incurring expenses in connection therewith, in an attempt to rectify and remedy his sick, sore, lame, and disabled condition; was caused to undergo numerous surgical procedures; was caused to be incapacitated from his employment and usual activities; was caused to experience severe physical and psychological pain, suffering, required surgery and treatment, incurred expenses, lost earnings, shortened life expectancy, and in other respects, was damaged.

39. By reason of the foregoing, plaintiff ERIC MAYVILLE has been damaged in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars.

**AS AND FOR A FIFTH, SEPARATE & DISTINCT
CAUSE OF ACTION
ON BEHALF OF PLAINTIFF JULIE MAYVILLE**

40. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs "1" through "39" with the same force and effect as though fully set forth at length herein.

41. At all times hereinafter mentioned, plaintiff JULIE MAYVILLE was and still is the lawfully wedded wife of plaintiff ERIC MAYVILLE and she was at all such times living, consorting and cohabiting with her said husband.

42. By reason of said injuries to plaintiff ERIC MAYVILLE, her husband, plaintiff JULIE MAYVILLE has suffered mental anguish by being forced to witness her husband's subsequent suffering whereby her own nerves and health have been seriously and permanently shocked, weakened and impaired, and by reason of the physical and mental

condition of her husband and she still continues to suffer in mind and body, and has been deprived of the services of her husband and his care, protection, consideration, companionship, aid, solace and society, and has been required to remain at home for long periods of time, denying herself to friends and relatives, and upon information and belief the aforesaid conditions will necessarily continue for a long time to come.

43. By reason of the foregoing, plaintiff JULIE MAYVILLE has been damaged in an indeterminate sum of not less than FIVE MILLION (\$5,000,000.00) DOLLARS.

JURY DEMAND

44. Plaintiffs hereby demand trial by jury.

RELIEF

WHEREFORE, plaintiff demands judgment against defendants, as follows:

1. On the First Cause of Action against defendant FUTURE MOTION, INC. for compensatory and punitive damages in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars;

2. On the Second Cause of Action against defendant FUTURE MOTION, INC. for compensatory and punitive damages in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars;

3. On the Third Cause of Action against defendant FUTURE MOTION, INC. for compensatory and punitive damages in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars;

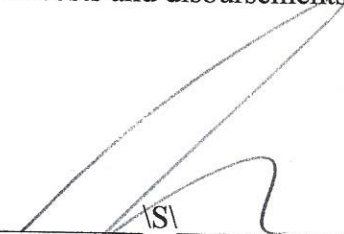
4. On the Fourth Cause of Action against defendant FUTURE MOTION,

INC. for compensatory and punitive damages in an indeterminate sum of not less than Ten Million (\$10,000,000.00) Dollars;

5. On the Fifth Cause of Action against defendant FUTURE MOTION, INC. for loss of services in an indeterminate sum of not less than Five Million (\$5,000,000.00) Dollars;

Together with interest, counsel fees and the costs and disbursements of this action.

Dated: New York, New York
July 10, 2020



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